

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 872 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHRENIK KANTILAL SHAH

Versus

STATE OF GUJARAT 2 OTHERS

Appearance:

None appears for the petitioner

Mr. A.J.Desai, learned A.G.P. appears for the State

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 12/03/97

ORAL JUDGEMENT

1. No one appears for the petitioner. Mr. A.J.Desai, learned Assistant Government Pleader appears for the State. Perused the petition and heard the A.G.P.

2. The petitioner seeks a mandamus to respondent No.1 to appoint the petitioner as Deputy Executive Engineer, Class II (Civil) under it and declare that the petitioner is entitled to deemed date on the post of

Deputy Executive Engineer, Class II (Civil), from the date there was a vacancy of the post in question in Roads and Buildings Department or from the date the petitioner's juniors were appointed as Deputy Executive Engineer, Class II (Civil), in Roads and Buildings Department.

3. As per the case of the petitioner he appeared at the examinations conducted by the Gujarat Public Service Commission in 1982 for recruitment to the post of Executive Engineer, Class I and Deputy Executive Engineer, Class II. The examinations for selecting Executive Engineer, Class I or Deputy Executive Engineer, Class II as direct recruits was not for posts under any particular Department, but after selection it was for the State Government to appoint the persons recommended by the Gujarat Public Service Commission to various Departments under it as per its requirement, though option was sought from the candidates about their preferences in respect of the departments in which they would like to serve, if appointment is offered to them. The list originally published by the Gujarat Public Service Commission was the subject matter of a challenge in Special Civil Applications Nos. 3820 of 1981, 5381 of 1983, 6041 of 1984, 326 of 1985 and 646 of 1985, inter alia on the ground that criteria of securing at least 40 per cent in the oral interview was arbitrary which challenge having been upheld, the revised select list was finally published on 3.4.1986 in the Government of Gujarat Gazette, wherein the petitioner's name has been placed at Sr.No.25. Thereafter on 7.12.1989, petitioner was offered appointment as Deputy Executive Engineer, Class II in the Water Resources Department. Petitioner being desirous of joining the Roads and Buildings Department, did not accept the offer of appointment and restrained himself from joining in pursuance of the appointment order, with a request that his name may be allowed to remain on waiting list for being considered for appointment in the Department of Roads and Buildings. Grievance made in the petition is that since then though other persons have been appointed, petitioner has not been offered any appointment and the respondents now be directed to appoint the petitioner out of the select list in the Department of Roads and Buildings, as persons who have been selected after him have been appointed in the Roads and Buildings Department. His further case is that since select list is to remain operative, until next selections are made, unless the petitioner is appointed in pursuance of the existing select list, he apprehends that if in pursuance of the examinations held thereafter, and result thereof is declared, he would lose his right

of appointment.

4. Firstly, mere inclusion in the select list does not give a candidate right to be appointed much less a right to be appointed to a particular Department when the exercise for selection has not been conducted with reference to specific post under a particular Department. Therefore, when the appointment was offered to the petitioner and he declined to accept the appointment on the ground on his preference to other Department, it amounts to waiving his right to be appointed. Moreover it is not even the case of the petitioner that when appointment was offered to the petitioner in Water Resources Department, any person lower in merit was offered appointment in Roads and Buildings Department by superceding option which was available to the petitioner, after satisfying quota, if any, of various interests to which reservations are available. In that view of the matter, the petitioner, in my opinion, forfeited his right to litigate in this matter when he declined to accept the appointment. Moreover, according to the learned A.G.P. when the petitioner failed to join within the time allowed under letter of appointment, the appointment order itself was cancelled. That would not revive the petitioner's place in wait list of selected candidates.

5. Apart from that learned A.G.P. has placed on record judgement of the Supreme Court in Special Civil Appeal No.5193 of 1989 concerning this very list in which the name of the petitioner was included, in which the Supreme Court has unequivocally directed that no fresh appointments now shall be made from the said select list of 3.4.1986.

The Court held:

"A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list.....

It could not effect quota of 1981-82 and 1982-83, therefore, no appointments on the quota of direct recruits for 1981-82 and 1982-83, could be made from the waiting list of 1980.....

Taking up the application of direct recruits, who have been appointed in pursuance of the decision of the High Court, for deemed date of appointment and grant of seniority at the same place as those appointed in 1980 or 1983 on the basis of selection held in 1980 and 1982, suffice it to say that even the appointment of these candidates was not in accordance with law yet we have not set it aside on equitable considerations. Further, a candidate appointed in pursuance of a direction issued by the High Court in 1989 in respect of a vacancy which might be deemed to have existed in 1981-82 cannot get seniority over those candidates who were appointed either from the same batch on the basis of better aggregate marks or over those candidates who were selected in the subsequent examination....."

In view of aforesaid finding the Supreme Court issued following directions:

- "(1) Any candidate who has been appointed in pursuance of the order passed by the High Court shall be deemed to be in service from the date he has joined and his seniority shall be reckoned from that date only.
- (2) No fresh appointment shall be made.
- (3) If vacancies for direct recruits have accrued between 1983 to 1993 and they have not been taken into account when the examination for 1993 was held then they shall form part of the requisition to be sent by the Government to the Commission either for the next examination if it is going to be held within one year or a fresh examination may be held in the alternative for such vacancies only within a period of one year from today. This direction is being issued in the peculiar facts of this case"

6. In that view of the matter, petitioner is not entitled to any relief prayed for. Petition is dismissed. Rule is discharged. Interim order, if any, stands vacated. No order as to costs.
